

No. 13023

United States
Court of Appeals
For the Ninth Circuit.

AL FREED,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court,
Southern District of California,
Central Division.

No. 13023

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant Al Freed:

EUGENE L. WOLVER,
437 S. Hill St.,
Los Angeles 13, Calif.

For Appellant Fred Johnson:

HAROLD JUDSON,
530 West 6th St.,
Los Angeles, Calif.,

HENRY F. POYET,
2815 Allesandro St.,
Los Angeles, Calif.,

BURKE MATHES,
453 S. Spring St.,
Los Angeles, Calif.

For Appellant Ralph Kushner:

LOW & STONE,
747 S. Hill St.,
Los Angeles 14, Calif.

For Appellee:

ERNEST A. TOLIN,
United States Attorney,

RAY H. KINNISON,

NORMAN W. NEUKOM,

RAY M. STEELE,

Assistants U. S. Attorney,
600 U. S. Post Office & Court House Bldg.,
Los Angeles 12, Calif.

In the United States District Court in and for
the Southern District of California, Central
Division

No. 21377 CD

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH KUSHNER, BEN GREENBLATT, AL-
BERT FREED, FRED JOHNSEN, BER-
NARD SCHOENFELD, FRANK METH,
SAM JOSIPOVIE, M. KUSHNER, ELMER
ALTERMAN, SID ULANSKY, RUBIN
PREMAZON, HERMAN M. PEARL,
JOSEPH ROSENBERG, PHILIP M.
BOROCK, and BEN WARREN, aka BEN
J. WARREN,

Defendants.

INDICTMENT

U. S. C. Title 18, Sec. 88 (1946 Ed.) U. S. C. Title
12, Sec. 1731 (a) 9 F. R. 7253 Et Seq., 12 F. R.
4369 Et Seq.—Conspiracy to Commit Offenses
Against the United States; Conspiracy to De-
fraud the United States; Conspiracy to Make,
Pass, Utter, and Publish False Statements Re.
F. H. A. Title I Loan Applications.

The grand jury charges:

* * *

Count Two

(Sec. 1731 (a), Title 12 U.S.C.)

On or about February 6, 1947, in Los Angeles County, California, within the Central Division of the Southern District of California, the defendants Ben Greenblatt, Alfred Freed, Ralph Kushner, Fred Johnsen, and Bernard Schoenfeld, for the purpose of obtaining a loan and an advance of credit from a corporation, namely, the Bank of America National Trust and Savings Association, with the intent that such loan and advance of credit should be offered to and accepted by the Federal Housing Administration for insurance, under the provisions of Title I of the National Housing Act, Title 12 of the United States Code Supplement, Section 1703 as amended, and regulations of the Federal Housing Commissioner governing property improvement loans issued thereunder, (9 F. R. 7253, et seq. as amended), did make, pass, utter and publish, and did cause to be made, passed, uttered and published, a statement, knowing the same to be false in that the defendants did prepare and present and did cause to be prepared and did cause to be presented, to the Bank of America National Trust and Savings Association, a written Federal Housing Administration Title I Credit application for a property improvement loan containing the signatures of Fred O. Jonson and Lenore Jonson, as borrowers, said application applying for and requesting credit in the amount of \$2,498.00, and said application stating and representing that said credit

was to be used for the purchase of materials for additions and improvements to a dwelling house located at 1904 Plant St., Redondo Beach, California, the defendants then knowing that the said statement was false in that the defendants then knew that the loan and credit so applied for was not to be used for the purchase of materials for additions and improvements to a dwelling house, at the aforesaid address, nor for additions and improvements to any dwelling house, but was to be used for the purchase of materials for the construction of a new dwelling house.

* * *

Count Four

(Title 12, U.S.C., Sec. 1731 (a))

On or about January 27, 1947, in Los Angeles County, California, within the Central Division of the Southern District of California, the defendants Ben Greenblatt, Albert Freed, Ralph Kushner, Fred Johnsen and Bernard Schoenfeld, for the purpose of obtaining a loan and an advance of credit from a corporation, namely, the Bank of America National Trust and Savings Association, with the intent that such loan and advance of credit should be offered to and accepted by the Federal Housing Administration for insurance, under the provisions of Title I of the National Housing Act, Title 12 of the United States Code Supplement, Section 1703 as amended, and regulations of the Federal Housing Commissioner governing property improvement loans issued thereunder, (9 F. R. 7253

et seq., as amended), did make, pass, utter, and publish, and did cause to be made, passed, uttered, and published, a statement knowing the same to be false in that the defendants did prepare and present and did cause to be prepared and did cause to be presented to the Bank of America National Trust and Savings Association, a written Federal Housing Administration Title I Credit Application for a property improvement loan containing the signatures of James Rodriguez and Emma R. Rodriguez, as borrowers, said application stating and representing that said credit was to be used for the purchase of materials for additions and improvements to a dwelling house located at 4423 W. 154th Street, Lawndale, California, the defendants then knowing that the said statement was false in that the defendants then knew that the loan and credit so applied for was not to be used for the purchase of materials for additions and improvements to a dwelling house at the aforesaid address nor for additions and improvements to any dwelling house, but was to be used for the purchase of materials for the construction of a new dwelling house.

* * *

A True Bill,

/s/ D. C. BAILEY,
Foreman.

/s/ ERNEST A. TOLIN,
United States Attorney.

[Endorsed]: Filed June 28, 1950.

[Title of District Court and Cause.]

NOTICE OF MOTION

To the Above-Named Plaintiff and to Ernest A.
Tolin, Esq., United States Attorney:

Please Take Notice that on Monday, the 14th day of August, 1950, at the hour of 10:00 a.m., or as soon thereafter as cause may be heard, the above-named defendants, Ben Greenblatt, Al Freed (therein designated Albert Freed) and Bernard Schoenfeld, will move the above-entitled court, in the court room of the Honorable Judge Ben Harrison, to dismiss and quash Counts Two, Three, Four, Six, Seven, Nine, Ten, Eleven, Twelve, Thirteen, Fourteen, Sixteen, Twenty, Twenty-one, Twenty-two, Twenty-five, Twenty-six, Twenty-seven, Thirty-one, Thirty-five, Thirty-six, Thirty-nine and Forty of the Indictment herein.

That the grounds of such motion are set forth in a written motion hereto annexed and by reference thereto, made a part hereof.

Dated this 7th day of July, 1950.

EUGENE L. WOLVER,

By /s/ GEORGE GOLDMAN,

Attorney for Above-Named
Defendants.

[Title of District Court and Cause.]

MOTION TO DISMISS AND QUASH

Come now the above-named defendants, Ben Greenblatt, Al Freed (therein designated Albert Freed) and Bernard Schoenfeld and move the above-entitled court to dismiss and quash the following counts of the Indictment herein, to wit: Counts Two, Three, Four, Six, Seven, Nine, Ten, Eleven, Twelve, Thirteen, Fourteen, Sixteen, Twenty, Twenty-one, Twenty-two Twenty-five, Twenty-six, Twenty-seven, Thirty-one, Thirty-five, Thirty-six, Thirty-nine and Forty, upon the ground that each and all of said counts are barred by the Statute of Limitations and particularly Title 18, United States Code—Crimes and Criminal Procedure, Section 3282.

That this motion will be based upon said Indictment, said code section and upon the Notice of Motion and the within motion.

Dated this 7th day of July, 1950.

EUGENE L. WOLVER,

By /s/ GEORGE GOLDMAN,

Attorney for Above-Named
Defendants.

[Endorsed]: Filed July 7, 1950.

[Title of District Court and Cause.]

MOTION FOR BILL OF PARTICULARS

The defendant, Al Freed, above-named, by Eugene L. Wolver, his attorney, moves the court for an order requiring the United States of America, the plaintiff herein, to furnish said defendant, within a time to be therein specified, a written Bill of Particulars, as to the following matters alleged in the Indictment herein, as follows:

1. How or in what manner said defendant participated, aided or abetted in the alleged commission of Overt Act Number 1 alleged on page 4, lines 1 to 4 of the Indictment hereof.

2. How or in what manner said defendant participated, aided or abetted in the alleged commission of Overt Act Number 2 alleged on page 4, lines 2 to 5 of the Indictment hereof.

3. How or in what manner said defendant participated, aided or abetted in the alleged commission of Overt Act Number 3 alleged on page 4, lines 8 to 10 of the Indictment hereof.

4. The name of the purchasers and the description and addresses of the buildings allegedly examined by said defendant in North Redondo Beach, California, as alleged in Overt Act Number 4, page 4, lines 11 to 14 of the Indictment hereof.

5. The time, place and parties present and the subject matter in substance of the conversation allegedly had between Sol Glass and said defendant,

as alleged in Overt Act Number 5, page 4, lines 15 to 16 of the Indictment hereof.

6. How or in what manner said defendant, participated, aided or abetted in the alleged commission of Overt Act Number 6 alleged on page 4, lines 17 to 20 of the Indictment hereof.

7. How or in what manner said defendant participated, aided or abetted in the alleged commission of Overt Act Number 7 alleged on page 4, lines 21 to 22 of the Indictment hereof.

8. How or in what manner said defendant participated, aided or abetted in the alleged commission of Overt Act Number 8 alleged on page 4, lines 23 to 27 of the Indictment hereof.

9. How or in what manner said defendant participated, aided or abetted in the alleged commission of Overt Act Number 9 alleged on page 4, lines 28 to 29 and page 5, lines 1 to 2 of the Indictment hereof.

10. How or in what manner said defendant participated, aided or abetted in the alleged commission of Overt Act Number 10 alleged on page 5, lines 3 to 5 of the Indictment hereof.

11. How or in what manner said defendant participated, aided or abetted in the alleged commission of Overt Act Number 11 alleged on page 5, lines 6 to 9 of the Indictment hereof.

12. How or in what manner said defendant participated, aided or abetted in the alleged commis-

sion of Overt Act Number 12 alleged on page 5, lines 10 to 13 of the Indictment hereof.

13. How or in what manner said defendant participated, aided or abetted in the alleged commission of Overt Act Number 13 alleged on page 5, lines 14 to 17 of the Indictment hereof.

14. How or in what manner said defendant participated, aided or abetted in the alleged commission of Overt Act Number 14 alleged on page 5, lines 18 to 21 of the Indictment hereof.

15. How or in what manner said defendant participated, aided or abetted in the alleged commission of Overt Act Number 15 alleged on page 5, lines 22 to 25 of the Indictment hereof.

16. How or in what manner said defendant participated, aided or abetted in the alleged commission of Overt Act Number 16 alleged on page 5, lines 26 to 27 of the Indictment hereof.

17. How or in what manner said defendant participated, aided or abetted in the alleged commission of Overt Act Number 17 alleged on page 5, lines 28 to 31 of the Indictment hereof.

18. How or in what manner said defendant participated, aided or abetted in the alleged commission of Overt Act Number 18 alleged on page 5, line 32 and page 6, lines 1 to 2 of the Indictment hereof.

19. How or in what manner said defendant participated, aided or abetted in the alleged commis-

sion of Overt Act Number 19 alleged on page 6, lines 3 to 5 of the Indictment hereof.

20. How or in what manner said defendant participated, aided or abetted in the alleged commission of Overt Act Number 20 alleged on page 6, lines 6 to 8 of the Indictment hereof.

21. How or in what manner said defendant participated, aided or abetted in the alleged commission of Overt Act Number 21 alleged on page 6, lines 9 to 10 of the Indictment hereof.

22. How or in what manner said defendant participated, aided or abetted in the alleged commission of Overt Act Number 22, alleged on page 6, lines 11 to 12 of the Indictment hereof.

23. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 2 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

24. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 3 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was

presented to the Bank of America National Trust and Savings Association.

25. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 4 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

26. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 5 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

27. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 6 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

28. In what manner the said defendant partici-

pated, aided or abetted in the commission of the offense set forth in Count 7 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

29. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 8 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

30. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 8 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

31. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 9 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be

false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

32. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 10 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

33. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 11 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

34. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 12 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

35. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 13 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

36. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 14 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

37. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 15 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

38. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 16 of the Indictment and the exact wording in said application therein de-

scribed, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

39. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 17 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

40. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 18 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

41. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 19 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was

presented to the Bank of America National Trust and Savings Association.

42. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 20 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

43. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 21 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

44. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 22 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

45. In what manner the said defendant partici-

pated, aided or abetted in the commission of the offense set forth in Count 23 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

46. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 24 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

47. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 25 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

48. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 26 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be

false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

49. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 27 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

50. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 28 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

51. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 29 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

52. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 30 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

53. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 31 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

54. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 32 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

55. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 33 of the Indictment and the exact wording in said application therein de-

scribed, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

56. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 34 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

57. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 35 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

58. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 36 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was

presented to the Bank of America National Trust and Savings Association.

59. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 37 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

60. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 38 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

61. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 39 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

62. In what manner the said defendant participated, aided or abetted in the commission of the

offense set forth in Count 40 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

63. In what manner the said defendant participated, aided or abetted in the commission of the offense set forth in Count 41 of the Indictment and the exact wording in said application therein described, alleged to be the statement known to be false; the date when said statement was prepared and signed and the exact date when the same was presented to the Bank of America National Trust and Savings Association.

64. Is it claimed by the Government that said defendant, personally, either prepared or caused said application, described in Count 2 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

65. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 3 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

66. Is it claimed by the Government that said defendant personally, either prepared or caused

said application, described in Count 4 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

67. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 5 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

67a. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 6 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

68. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 7 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

69. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 8 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

70. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 9 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

71. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 10 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

72. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 11 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

73. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 12 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

74. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 13 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

75. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 14 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

76. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 15 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

77. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 16 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

78. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 17 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

79. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 18 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

80. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 19 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

81. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 20 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

82. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 21 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

83. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 22 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

84. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 23 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

85. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 24 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

86. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 25 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

87. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 26 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

88. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 27 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

89. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 28 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

90. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 29 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

91. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 30 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

92. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 31 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

93. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 32 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

94. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 33 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

95. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 34 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

96. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 35 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

97. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 36 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

98. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 37 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

99. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 38 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

100. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 39 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

101. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 40 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

102. Is it claimed by the Government that said defendant personally, either prepared or caused said application, described in Count 41 of the Indictment, to be signed or presented to the Bank of America National Trust and Savings Association?

103. Is the prosecution of Count 2 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

104. Is the prosecution of Count 3 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

105. Is the prosecution of Count 4 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

106. Is the prosecution of Count 5 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

107. Is the prosecution of Count 6 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

108. Is the prosecution of Count 7 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

109. Is the prosecution of Count 8 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

110. Is the prosecution of Count 9 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

111. Is the prosecution of Count 10 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

112. Is the prosecution of Count 11 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

113. Is the prosecution of Count 12 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

114. Is the prosecution of Count 13 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

115. Is the prosecution of Count 14 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

116. Is the prosecution of Count 15 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

117. Is the prosecution of Count 16 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

118. Is the prosecution of Count 17 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

119. Is the prosecution of Count 18 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

120. Is the prosecution of Count 19 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

121. Is the prosecution of Count 20 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

122. Is the prosecution of Count 21 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

123. Is the prosecution of Count 22 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

124. Is the prosecution of Count 23 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

125. Is the prosecution of Count 24 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

126. Is the prosecution of Count 25 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

127. Is the prosecution of Count 26 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

128. Is the prosecution of Count 27 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

129. Is the prosecution of Count 28 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

130. Is the prosecution of Count 29 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

131. Is the prosecution of Count 30 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

132. Is the prosecution of Count 31 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

133. Is the prosecution of Count 32 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

134. Is the prosecution of Count 33 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

135. Is the prosecution of Count 34 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

136. Is the prosecution of Count 35 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

137. Is the prosecution of Count 36 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

138. Is the prosecution of Count 37 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

139. Is the prosecution of Count 38 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

140. Is the prosecution of Count 39 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

141. Is the prosecution of Count 40 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

142. Is the prosecution of Count 41 of the Indictment, based upon 12 U. S. Code Supplement, Section 1703 as amended, or the regulations of the

Federal Housing Commissioner and if the latter, what section or sections were allegedly violated?

Dated this 25th day of August, 1950.

/s/ EUGENE L. WOLVER,
Attorney for Defendant,
Al Freed.

[Endorsed]: Filed August 28, 1950.

At a stated term, to wit: The September Term A.D. 1950, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday, the 25th day of September, in the year of our Lord one thousand nine hundred and fifty.

Present: The Honorable Leon R. Yankwich,
District Judge.

[Title of Cause.]

MINUTE ORDER SEPTEMBER 25, 1950

For (1) ruling on (A) motions of Def't Rosenberg, filed July 7, 1950, and Aug. 9, 1950, to dismiss and quash counts 15 and 36; (B) motions of Def't Young, filed July 7, 1950, and Aug. 9, 1950, to dismiss and quash counts 15, 28, 29, 33, 38; (C) motions of Defendants Greenblatt, Freed, and Schoenfeld, filed July 7, 1950, and Aug. 9, 1950, to dismiss and quash counts 2, 3, 4, 6, 7, 9, 10 to 14 incl., 16, 20, 21, 22, 25, 26, 27, 31, 35, 36, 39, 40;

(D) motion of Def't Johnsen, filed Aug. 28, 1950, to dismiss and quash all counts; (E) motion of Def't Borock, filed Aug. 28, 1950, to dismiss and quash count 31; (F) motion of Defendants R. Kushner, Warren, M. Kushner, Alterman, and Premazon, filed Sept. 6, 1950, to dismiss and quash all counts; (2) argument on (A) motion of Fred Johnsen, filed Aug. 28, 1950, for Bill of Particulars; (B) motion of Al Freed, filed Aug. 28, 1950, for Bill of Particulars; and (3) fixing time for pleas;

Leonard Low, Esq., appearing as counsel for Defendants Ralph Kushner, M. Kushner, Elmer Alterman, Rubin Premazon, and Ben J. Warren;

Harold Judson, Esq., appearing as counsel for defendant Ben Greenblatt; Eugene L. Wolver, Esq., appearing as counsel for defendants Al Freed, Bernard Schoenfeld (for whom Sorrell Troppe, Esq., is also appearing), Samuel J. Young, and Josef Rosenberg; H. F. Poyet, Esq., appearing as counsel for defendant Fred Johnsen; Jos. Friedman, Esq., appearing as counsel for defendants Sid Ulan-sky and Philip N. Borock; Edward Stanton, Esq., appearing as counsel for defendant Herman M. Pearl; all of the said defendants are on bond and not present;

Attorneys Wolver and Poyet argue to the Court re Bill of Particulars, and R. M. Steele, Ass't U. S. Att'y, appearing as counsel for Gov't, makes a statement re Gov't's position. Court orders motions for Bill of Particulars denied.

The Court states that the Statute of Limitations

has not run against any of the counts of the Indictment and makes a statement of the reasons, and orders that each of the motions to dismiss is denied.

On motion of Attorney Judson it is ordered that the cause is continued to Oct. 30, 1950, 10 a.m., for pleas of all defendants.

At a stated term, to wit: The September Term, A.D. 1950, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday, the 30th day of October, in the year of our Lord one thousand nine hundred and fifty.

Present: The Honorable Leon R. Yankwich,
District Judge.

[Title of Cause.]

MINUTE ORDER OCTOBER 30, 1950

For plea of all fourteen defendants; R. M. Steele, Ass't U. S. Att'y, appearing as counsel for Gov't; Joseph Stone, Esq., appearing as counsel for defendants Ralph Kushner, M. Kushner, Elmer Alterman, Rubin Premazon, and Ben J. Warren; Harold Judson, Esq., appearing as counsel for defendant Ben Greenblatt; Eugene L. Wolver, Esq., appearing as counsel for defendants Al Freed, charged as Albert Freed; Samuel J. Young, charged as Sam-Josipovic, for whom Chas. H. Carr, Esq., also

appears; and defendant Josef Rosenberg, charged as Joseph Rosenberg, for whom Chas. H. Carr, Esq., also appears; Burke Mathes, Esq., appearing as counsel for defendant Fred Johnsen; Sorrell Trope, Esq., appearing as counsel for defendant Bernard Schoenfeld; Joseph Friedman, Esq., appearing as counsel for defendants Sid Ulansky and Philip N. Borock, charged as Philip M. Borock; Edward Stanton, Esq., appearing as counsel for defendant Herman M. Pearl; all of the said fourteen defendants being present on bond at 10 a.m., except defendant M. Kushner, who appears at 10:45 a.m.

On motion of Attorney Wolver, and agreement by defendants, it is ordered that Chas. H. Carr, Esq., is substituted in place of Attorney Wolver as counsel for defendants Josef Rosenberg and Samuel J. Young. Appearance praecipe Attorney Carr is filed.

All counsel waive reading of Indictment. Each defendant, except M. Kushner, who is not present, pleads not guilty to each count in which he is charged, to wit: Defendants Ralph Kushner, Ben Greenblatt, Al Freed, Fred Johnsen, and Bernard Schoenfeld in counts 1 to 41, inclusive; defendant Samuel J. Young in counts 1, 15, 28, 29, 33, 38; defendant Elmer Alterman in counts 1, 3, 14, 19; Sid Ulansky in counts 1 and 18; defendant Rubin Premazon in counts 1 and 8; defendant Herman M. Pearl in counts 1 and 17; Josef Rosenberg in counts 1, 15, and 36; defendant Philip N. Borock in counts 1, 30, 31, 32, 37; defendant Ben J. War-

ren in counts 1, 5 to 13, inclusive, 20, 23, 25, 26, 27, 39.

Court orders cause continued to October 31, 1950, 10 a.m., for plea of defendant M. Kushner, who is charged in counts 1 and 24.

Court orders jury trial of defendants who are present this date set for February 13, 1951, 10 a.m.

At 10:45 a.m. defendant M. Kushner is present. Court orders that continuance for his plea is set aside. Attorney Stone, in behalf of said defendant, waives reading of Indictment and said defendant pleads not guilty to each of counts 1 and 24. Court orders trial of defendant M. Kushner set for February 13, 1950, 10 a.m.

District Court of the United States for the Southern
District of California, Central Division

No. 21,377 Criminal

41 Count Indictment, 12 USC 1731(a)

UNITED STATES OF AMERICA,

vs.

AL FREED, Charged as Albert Freed.

JUDGMENT AND COMMITMENT

On this 4th day of June, 1951, came the attorney for the government and the defendant appeared in person and by counsel, Eugene L. Wolver, Esq.

It Is Adjudged that the defendant has been convicted upon his plea of Nolo Contendere to each

of counts 2 and 4 of the offenses of (ct 2) that on or about February 6, 1947, in Los Angeles County, Calif., defendant did prepare and present a credit application to the Bank of America N.T.&S.A., with intent such loan be insured by the Federal Housing Administration, representing said credit was for purchase of materials for additions to a dwelling house, defendant then knowing said statement was false in that the loan was to be used for purchase of materials for construction of a new dwelling house; (count 4 charges violation similar to count 2 occurring on or about January 27, 1947), as charged in said Indictment, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of six months in an institution of the jail type on Count 2 and pay unto the United States of America a fine of \$1,000.00 on Count 4; and stand committed to an institution of the jail type until said fine is paid or he is discharged therefrom by due process of law.

It Is Further Ordered that execution of said sentence on each count is stayed until 5 p.m., June 20, 1951.

It Is Further Ordered that each of Counts 1, 3,

and 5 to 41, inclusive, is hereby dismissed as to defendant Al Freed.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ LEON R. YANKWICH,
United States District Judge.

[Endorsed]: Filed June 4, 1951.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant: Al Freed, 5532 Sierra Vista Avenue, Los Angeles, California.

Name and address of appellant's attorney: Eugene L. Wolver, 310 Ohio Oil Building, 437 South Hill Street, Los Angeles, California.

Offense: Violation of U.S.C. Title 18, Section 88, (1946 Ed.); U.S.C. Title 12, Section 1731(a) (9 F. R. 7253, et seq., 12 F. R. 4369, et seq.—conspiracy to commit offenses against the United States; conspiracy to defraud the United States; conspiracy to make, pass, utter and publish false statements re F.H.A. Title I loan applications).

Concise statement of judgment: Confined to jail for a period of six months on Count Two of the

Indictment, plus a fine of \$1,000.00 on Count Four of the Indictment.

Name of institution where now confined, if not on bail: Now on Bail.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

Dated this 14th day of June, 1951.

/s/ AL FREED,
Appellant.

/s/ EUGENE L. WOLVER,
Attorney for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed June 14, 1951.

In the United States District Court, Southern
District of California, Central Division

No. 21377-CD

UNITED STATES OF AMERICA,
Plaintiff,
vs.

RALPH KUSHNER, et al.,
Defendants.

Honorable Leon R. Yankwich, Judge Presiding.

REPORTER'S PARTIAL TRANSCRIPT
OF PROCEEDINGS

September 11, 1950

Appearances:

For the Plaintiff:

ERNEST A. TOLIN,
United States Attorney, by
RAY M. STEELE,
Assistant United States Attorney.

For the Defendants Ralph Kushner, M. Kushner, Elmer Alterman, Rubin Premazon and Ben J. Warren:

JOSEPH STONE.

For the Defendants Al Freed, Bernard Schoenfeld, Samuel J. Young and Josef Rosenberg:

EUGENE L. WOLVER, and
SORREL TROPE.

For the Defendant Ben Greenblatt:

HAROLD JUDSON.

For the Defendant Fred Johnsen.

BURKE MATHES, and

HENRY F. POYET.

For the Defendants Sid Ulansky and Philip
N. Borock:

JOSEPH FRIEDMAN.

For the Defendant Herman M. Pearl:

EDWARD B. STANTON.

Monday, September 11, 1950—10:00 A.M.

STATEMENTS AND RULINGS
OF THE COURT

The Court: I have just seen the supplement. I think I will make a statement, gentlemen. This is a branch of law with which I am very familiar. We might as well start in with an understanding of the problems. The Ninth Circuit Court of Appeals recently in an opinion in the Bridges case, while it was not in other respects noted for this fact, through Judge Nealy pointed to the fact that that question was involved in that case. And he gave the state of the law on the subject of the statute of limitations, referring to *Marzani v. United States*, 1947, U. S. App. D. C., 168 F. 2d. 133, on which counsel here rely, which was con-

firmed merely by a divided court, and the later case, the Godfried case,—

Mr. Wolver: That is an earlier case.

The Court: The other case, *U. S. v. Godfried*, 1948, 2 Cir., 165 F. 2d. 360, took a different view, and a writ of certiorari was denied. On that state of the law each of us is free to draw any conclusion he desires from the particular opinions and their application to a particular case.

My own view of the law is that the word “fraud” used in a suspension statute is used in the sense which the Supreme Court of the United States has always interpreted that word to mean, and that is that it is not limited merely to property or pecuniary loss. In other words, Mr. Chief Justice Taft in *Hammerschmidt v. U. S.*, 1924, 265 U. S. 182, said that when you talk about fraud in the United States, fraud may consist in actual pecuniary loss or in depriving the government of the United States of independence of action on the part of its officers through certain means and devices, although no pecuniary loss exists.

In other words, if, for instance, you presented a false statement which resulted in an officer of the United States acting on a matter where he would not otherwise act, that is a fraud on the United States. That has been the law ever since the word “fraud” was interpreted. So that I personally am inclined to agree with the Second Circuit to the effect that the word “fraud” in these suspensory statutes is not to be limited to cases of pecuniary loss.

Having read your briefs and your memoranda and having read other things and being familiar with this branch of the law, I am stating that is my conclusion and I would not follow the Marzani case. I would rather follow the other one.

I choose to follow the reasoning which is more consistent with the history of the law. In Federal statutes fraud has been much broader than fraud under the state statutes. Repeatedly the courts have held that the interpretation has been very broad. I, myself, during the days of rationing found no difficulty in applying the various sections relating to fraudulent presentation of instruments, of coupons and the like.

One of the most interesting cases that arose in this court was the case of *Mosca v. U. S.*, 1945, 2 Cir., 174 F. 2d. 448. Incidentally, a former United States attorney appeared for Mr. Mosca. Mr. Mosca had manipulated the securing of sugar by means of checks. I do not know whether you remember when sugar was handled by manufacturers like a checking account. They sent through the bank a demand for so much sugar and the presumption was that they had presented the coupons to cover it. Mr. Carr argued before me and before the higher court that that was not an instrument and the government had called it a bill of exchange.

I held it did not make any difference what it was, I thought it was really a draft against a fund. It was an instrument which initiated a proceeding which resulted in obtaining something, just as you

would draw against a fund. The Circuit affirmed me in that interpretation. So I am stating to you what my reaction is on the state of the law as I find it.

The Marzani case is an interpretation in the light of so-called legislative history. I have had enough to do with legislatures in my early career to know that legislative history does not mean anything.

Many times to have followed legislative history would have destroyed the Mann Act, which never would have been enforced if we followed legislative history. Remember in that case Mr. Mann, himself, appeared before the Supreme Court and said that Act was intended to cover only commercialized prostitution, and not intended to cover the case of somebody just being pleasure bent, as in *Caminetti v. U. S.*, 1917, 242 U. S. 70.

Mr. Justice Holmes said he was not interested in what they intended to do. They made the language broad enough to cover those other instances. Legislative history does not in itself resolve the question because many times they intended to do one thing and they do exactly another. When the language they use has a specific meaning in law they are presumed to have passed the legislation with that meaning in view. So I would not follow the Marzani case.

* * *

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the

United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 2nd day of October, A.D. 1950.

/s/ VIRGINIA K. PICKERING,
Official Reporter.

[Endorsed]: Filed April 4, 1951.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 136, inclusive, contain the original Indictment; Notice of Motion; Motion to Dismiss and Quash and Points and Authorities of Al Freed, et al.; Notice to Dismiss and Quash of Fred Johnsen; Affidavit of Fred Johnsen in Support of Motion to Dismiss and Quash; Motion to Dismiss and Quash and Points and Authorities of Ralph Kushner, et al.; Supplement to Brief of Law; Motion for Bill of Particulars; Judgments and Commitments as to Al Freed, Fred Johnsen and Ralph Kushner; Notices of Appeal of Al Freed,

Fred Johnsen and Ralph Kushner and Designations of Record on Appeal and a full, true and correct copy of minute orders entered September 25, 1950; October 30, 1950, and April 24, 1951, which, together with copy of reporter's transcript of proceedings on April 11, 1950, (partial) and April 24, 1951, (partial), transmitted herewith, constitute the record on appeals to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$4.80 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 20th day of July, A.D. 1951.

[Seal] EDMUND L. SMITH,
Clerk.

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 13023. United States Court of Appeals for the Ninth Circuit. Al Freed, Fred Johnson and Ralph Kushner, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed July 23, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
in and for the Ninth Circuit

No. 13023

UNITED STATES OF AMERICA,
Plaintiff and Appellee,

vs.

RALPH KUSHNER, et al.,
Defendants,

AL FREED,
Defendant and Appellant.

STATEMENT OF POINTS OF APPEAL AND
DESIGNATION OF RECORD

(Rule 19, Paragraph 6, Rules of Court)

To Paul J. O'Brien, Clerk of the Above-Entitled
Court:

Please Take Notice, that pursuant to Rule 19,
Paragraph 6 of the Rules of Practice of the above-
entitled court, Appellant, Al Freed, makes the fol-
lowing statement and designation:

1. Statement of Grounds and Legal Points of
Appeal:

That the only grounds and legal points of appeal
hereafter to be presented by said appellant is that
Counts Two and Four of the Indictment herein to
which said Appellant heretofore plead "Nolo Con-
tendere" are:

(a) Each and both are barred by the Stat-

ute of Limitations, to wit: 18 U. S. Code Annotated, Section 3282.

(b) That Court Four of said Indictment does not state facts sufficient to constitute a public offense in that it is not therein alleged that in the application, there was any "applying for or requesting credit" in any specified amount.

2. Designation of Record Material for Consideration of Said Grounds:

Said Appellant hereby designates the following as that portion of the record which is material for the consideration of said appeal or review:

(a) Counts Two and Four of the Indictment.

(b) Notice of and Motion to Dismiss and Quash, dated the 7th day of August, 1950.

(c) Points and Authorities in support of said motion to dismiss and quash.

(d) Supplement to points and authorities in support of said motion to dismiss and quash.

(e) Notice of and motion for Bill of Particulars, dated the 25th day of August, 1950.

(f) Statements and rulings of the court on the 11th day of September, 1950, at the time of the submission to said court of said motion to dismiss and quash.

(g) Minute Order and ruling on said motions to dismiss and quash and for Bill of Particulars made on or about the 25th day of September, 1950.

(h) Original plea of defendant and Appellant, Al Freed, to Counts Two and Four of the Indictment.

(i) Change of plea of Al Freed, to said Counts Two and Four of the Indictment to Nolo Contendere.

(j) Sentence imposed on said defendant and Appellant, Al Freed, on June 4, 1951.

(k) Notice of Appeal, filed June 14, 1951.

(l) The Designation of Record on Appeal.

Dated this 3rd day of August, 1951.

Respectfully submitted by

/s/ EUGENE L. WOLVER,

Attorney for Defendant and
Appellant, Al Freed.

Affidavit of Service by Mail attached.

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